

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TOYO TIRE HOLDINGS OF
AMERICAS INC., a California
corporation, as successor in interest
to TOYO TIRE INTERNATIONAL,
INC.,

Plaintiff,

vs.

CONTINENTAL TIRE NORTH
AMERICA, INC., an Ohio
corporation, as successor in interest
to GENERAL TIRE, INC.;
YOKOHAMA CORP. OF
AMERICA, a California corporation;
GTY TIRE CO., an Ohio general
partnership; and DOES 1-100,
inclusive,

Defendants.

Case No. SACV10-52-JVS(RNBx)

Assigned for All Purposes to:

Hon. James V. Selna
Dept. 10C

**ORDER GRANTING PLAINTIFF
TOYO TIRE HOLDINGS OF
AMERICAS INC.'S MOTION FOR A
PRELIMINARY INJUNCTION**

Date:

Time:

Dept: 10C

Judge: Hon. James V. Selna

[On remand from the U.S. Court of
Appeals for the Ninth Circuit]

ORDER

The above-captioned matter was remanded to the Court on June 17, 2010. *See* Docket Entry No. 81. Subsequently, on June 21, 2010, the Court scheduled a June 29, 2010 hearing date on Plaintiff Toyo Tire Holdings of Americas Inc.'s ("Toyo-US" or "Plaintiff") request for preliminary injunctive relief, and the Court ordered Toyo-US, as well as Defendants Yokohama Corporation of America ("Yokohama-US") and Continental Tire North America, Inc. ("Continental-US") (collectively, "Defendants"), to submit any "briefs updating the record on this issue" no later than June 24, 2010. *See* Docket Entry No. 82.

By Defendants' request, at the June 29, 2010 hearing, the Court re-set the briefing schedule for any supplemental submissions updating the record in connection with Toyo-US's motion for preliminary injunctive relief. *See* Docket Entry No. 102. The Court allowed the parties to conduct limited discovery and it scheduled a hearing on Toyo-US's motion for preliminary injunctive relief for Thursday, July 8, 2010. *See id.*

After conducting certain discovery, the parties made their supplemental submissions updating the record, and on July 8, 2010, the Court heard arguments on Toyo-US's motion. During the July 8, 2010 hearing, Defendants requested, and the Court granted, further supplemental briefing, due no later than July 9, 2010, at 12:00 p.m. The parties complied with the Court's order.

After reviewing the submissions of the parties, and hearing the arguments of the parties through their respective counsel, on July 9, 2010, the Court issued a Final Order Granting in Part and Denying in Part Plaintiff's Application for Preliminary Injunction (the "July 9, 2010 Minute Order"). *See* Docket Entry No. 158. In the July 9, 2010 Minute Order, the Court directed Toyo-US to "submit a proposed order to this effect forthwith."

THEREFORE, it is hereby ORDERED that Toyo-US's motion for preliminary injunctive relief is GRANTED in part and DENIED in part. The

1 Defendants are hereby ORDERED to comply with the Partnership Agreement by
 2 providing Toyo-US with its allocation of truck and bus radial tires (“TBRs”)
 3 forthwith.

4 It is further ORDERED that this injunction shall remain in force until the
 5 Arbitral Tribunal, constituted by the International Chamber of Commerce
 6 International Court of Arbitration pursuant to the arbitration provision of the
 7 parties’ Partnership Agreement, rules on Toyo-US’s request for interim injunctive
 8 relief in the arbitral forum, or upon application by the Defendants, if the Defendants
 9 establish that Toyo-US is not diligently pursuing its remedies for interim relief
 10 before the Arbitral Tribunal.

11 It is further ORDERED that, within 14 days of the Court’s July 9, 2010
 12 Minute Order, Defendants shall submit a report, verified by one or more officers or
 13 managing agents, setting forth a timetable for satisfying Toyo-US’s outstanding
 14 TBR orders (including the balance of Toyo-US’s January order, along with its
 15 February, March, April, May, June, and July orders,¹ in which Toyo-US requested
 16 its allocation of the following models of TBRs: M120Z, M122, M127, M147,
 17 M610ZL, and M627,² as provided herein and in footnote 2 below, which is

18 ¹ True and correct copies of the above-listed orders may be found in the record. *See* Exhibit C to
 19 the Declaration of John F. Hagan, dated June 22, 2010, filed under seal on June 24, 2010
 20 [pursuant to the Manual Filing Notice at Docket Entry No. 88], and Exhibit A to the Declaration
 of John F. Hagan, dated July 7, 2010, filed under seal on July 7, 2010 [Docket Entry No. 126].

21 ² As requested in Toyo-US’s Reply Brief Updating the Record, filed under seal on July 7, 2010
 22 [see Docket Entry No. 124, at p. 25:14-20], production shall include the aforementioned models
 which contain the following Toyo-US and GTY product codes:

23 **M120Z**, Toyo-US Product Code 547640, GTY Product Code 0213050;

24 **M122**, Toyo-US Product Code 548000, GTY Product Code 0242586;

25 **M122**, Toyo-US Product Code 548020, GTY Product Code 0242578;

26 **M122**, Toyo-US Product Code 548010, GTY Product Code 0242582;

27 **M127**, Toyo-US Product Code 541300, GTY Product Code 0295191;

28 **M127**, Toyo-US Product Code 541320, GTY Product Code 0295192;

M127, Toyo-US Product Code 541310, GTY Product Code 0295216;

incorporated by reference), which shall include approximate dates of delivery and quantities. It is the Court's intent that the Defendants put in place a scheme for delivery which approximately replicates historic delivery rates for the period of 2008-2009.

It is further ORDERED that, where necessary to achieve the substance of the order set forth in the paragraph immediately above, Defendants shall give priority to Toyo-US's outstanding orders over orders by the Defendants of a later date.

IT IS SO ORDERED.

DATED: July 13, 2010



HONORABLE JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

M127, Toyo-US Product Code 541330, GTY Product Code 0295200;
M147, Toyo-US Product Code 547300, GTY Product Code 0100048;
M147, Toyo-US Product Code 547310, GTY Product Code 0100052;
M147, Toyo-US Product Code 547320, GTY Product Code 0100030;
M147, Toyo-US Product Code 547340, GTY Product Code 0100046;
M147, Toyo-US Product Code 547330, GTY Product Code 0100064;
M147, Toyo-US Product Code 547350, GTY Product Code 0100068;
M610ZL, Toyo-US Product Code 556460, GTY Product Code 0213220;
M610ZL, Toyo-US Product Code 556470, GTY Product Code 0100076;
M610ZL, Toyo-US Product Code 556500, GTY Product Code 0213230;
M610ZL, Toyo-US Product Code 556510, GTY Product Code 0213235;
M610ZL, Toyo-US Product Code 556520, GTY Product Code 0213211;
M610ZL, Toyo-US Product Code 556530, GTY Product Code 0100075;
M627, Toyo-US Product Code 558100, GTY Product Code 0120472;
M627, Toyo-US Product Code 558110, GTY Product Code 0120473;
M627, Toyo-US Product Code 558120, GTY Product Code 0120468;
M627, Toyo-US Product Code 558130, GTY Product Code 0120469;
M627, Toyo-US Product Code 558140, GTY Product Code 0120470; and
M627, Toyo-US Product Code 558150, GTY Product Code 0120471.